

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Resorts International, Inc. :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1968. :  
\_\_\_\_\_ :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Resorts International, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Resorts International, Inc.  
915 N.E. 125th St.  
N. Miami, FL 33161

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
6th day of May, 1983.

David Parchuck

Ann M. A. Heglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Resorts International, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Year 1968. :

State of New York  
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon John K. Antholis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John K. Antholis  
Edwards & Antholis  
95 Madison Ave.  
Morristown, NJ 07960

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
6th day of May, 1983.

David Parchuck

Annice A. Hegland

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

May 6, 1983

Resorts International, Inc.  
915 N.E. 125th St.  
N. Miami, FL 33161

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
John K. Antholis  
Edwards & Antholis  
95 Madison Ave.  
Morristown, NJ 07960  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:
of	:
RESORTS INTERNATIONAL, INC.	:
for Redetermination of a Deficiency or for	:
Refund of Corporation Franchise Tax under	:
Article 9A of the Tax Law for the Year 1968.	:

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Petitioner, Resorts International, Inc. 915 North East 125th Street, North Miami, Florida 33161, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9A of the Tax Law for the year 1968 (File No. 24207).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 27, 1982 at 10:45 A.M. Petitioner appeared by Edwards & Antholis (John K. Antholis, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether it was proper for the Audit Division to include in petitioner's entire net income the gain which petitioner received from the sale of its paint division in 1968.

FINDINGS OF FACT

1. Petitioner, Resorts International, Inc. ("Resorts"), filed a New York State Corporation Franchise Tax Report for the calendar year 1968. On this return Resorts reported entire net income of \$3,446,326.00 to which certain adjustments were made.

2. On June 15, 1971 the Audit Division issued a Statement of Audit Adjustment which cancelled a prior Statement of Audit Adjustment and asserted a tax due of \$7,678.30 plus interest of \$1,011.41 for a total of \$8,689.71. The Audit Division determined that interest expense of \$477,158.00 attributable to subsidiary capital should be added to petitioner's entire net income. The Audit Division also disallowed a portion of a net operating loss carryback which was sustained in 1969. Lastly, the Audit Division disallowed a deduction claimed of \$3,759,865.00 from its entire net income arising from the capital gain incurred upon the sale of petitioner's Mary Carter Paint Co. Division. Although the petition challenged the denial of the interest expense deduction and argued that there were net operating losses sustained in 1970 which would offset any income for the years 1968, no argument or evidence was presented either at or after the hearing on such points.

3. Prior to May 7, 1968 petitioner was known as the Mary Carter Paint Co. ("Mary Carter"). Petitioner was primarily engaged in two endeavors. First, petitioner had a Mary Carter Paint Co. Division ("Paint Division") which sold paint and paint related products through a network of franchise dealers and company-owned stores. Second, petitioner was engaged in investing in a resort area in the Bahamas.

4. On May 7, 1968 petitioner sold its Paint Division to Delafield Industries, Inc. In addition to the sale of the assets of the Paint Division, petitioner sold the name "Mary Carter Paint Co." to Delafield Industries, Inc. Thereafter, petitioner adopted the name Resorts International, Inc.

5. Prior to its sale, the Paint Division maintained a one room office of approximately 900 square feet in New York City which was staffed by James M. Crosby, Chairman of the Board of Mary Carter, and a secretary. As Chairman of

the Board, Mr. Crosby was not involved with the daily operations of the Paint Division. He was involved with maintaining relationships with investors and bankers. However, the financial information of the Paint Division was stored in Tampa, Florida.

6. The president of Mary Carter was a Mr. I.G. Davis. Mr. Davis resided in Clearwater, Florida and was primarily involved in handling investments which the Paint Company had embarked on in the Bahamas.

7. Mr. Ralph White, who held the title of "president" of the Paint Division, was employed in Tampa, Florida. Mr. White was involved with the daily operations of the Paint Division including sales, manufacturing and financial concerns. Mr. White worked under Mr. Crosby's direction.

8. The day-to-day operations of the Paint Division were controlled by executives located in Tampa, Florida. The executives who operated the Paint Division's plants at various locations around the country also reported to the Paint Division's executives in Tampa.

9. Financial details regarding the Paint Division would be handled by the financial vice-president of the Paint Division who was located in Florida. This person would consult with Mr. Crosby.

10. Mr. White negotiated the sale of the Paint Division with Delafield Industries, Inc. and the senior lenders. Mr. Davis also took part in these negotiations. These negotiations were held primarily in Tampa, Florida. On one or two occasions these negotiations were held on Paradise Island, at Nassau, Bahamas. Negotiations for the sale of the Paint Division were not held in New York.

11. The decision to sell the Paint Division was made by the Board of Directors of the Paint Company. Only one of the members of the Board of Directors resided in New York. From 1966 through 1968 the Board of Directors

held meetings in, among other places, New York, New Jersey, Florida, California, and the Bahamas.

12. Resorts had a continuing interest in the Paint Division following its sale because part of the proceeds of the sale included notes.

13. After the sale of the Paint Division, Resorts maintained an office in New York City staffed with three individuals: Mr. Gore, who was a financial vice-president, a secretary, and an individual whose principal function was to purchase furniture for Resort's facilities in the Bahamas. Mr. Gore's function was to try to have the outstanding stock registered under the rules of the Securities and Exchange Commission.

14. Prior to its sale, petitioner had included the income from the Paint Division in its New York entire net income.

15. Florida did not tax the capital gains arising from petitioner's sale of its Paint Division.

16. Petitioner held itself out as maintaining a principle office in New York City.

#### CONCLUSIONS OF LAW

A. That subdivision (9) of section 208 of the Tax Law provides, in part:

"The term 'entire net income' means total net income from all sources, which shall be presumably the same as the entire taxable income which the taxpayer is required to report to the United States treasury department...subject to any modification required..."

B. That subdivision (8) of section 210 of the Tax Law provides:

"If it shall appear to the tax commission that any business or investment allocation percentage determined as hereinabove provided does not properly reflect the activity, business, income or capital of a taxpayer within the state, the tax commission shall be authorized in its discretion, in the case of a business allocation percentage, to adjust it by (a) excluding one or more of the factors therein, (b) including one or more other factors, such as expenses,

purchases, contract values (minus subcontract values), (c) excluding one or more assets in computing such allocation percentage, provided the income therefrom is also excluded in determining entire net income, or (d) any other similar or different method calculated to effect a fair and proper allocation of the income and capital reasonably attributable to the state...".

C. That there is no inequity in requiring the inclusion of the capital gain on the sale of the Paint Division in petitioner's entire net income inasmuch as, prior to its sale, petitioner had included the income from the Paint Division in its entire net income. Moreover, the management of the Paint Division was ultimately responsible to the Chairman of the Board whose office was maintained in New York. Further, the Paint Division held itself out as maintaining a principle office in New York. Lastly, it is noted that requiring petitioner to include the capital gain on the sale of its Paint Division in its New York entire net income would not have an inequitable effect on petitioner's franchise tax liability, since Florida did not tax this capital gain.

D. That the Audit Division is directed to adjust the business allocation factor by including the capital gain arising from the sale of the Paint Division in the denominator of the receipts factor, and increasing the denominator of the property factor to reflect the actual market value of the physical assets of the Paint Division based on the sales price (Matter of General Foods Corporation, State Tax Commission, June 18, 1973).

E. That the petition of Resorts International, Inc. is granted to the extent indicated in Conclusion of Law "D" and, is in all other respects denied.

DATED: Albany, New York

MAY 06 1983

STATE TAX COMMISSION

*Rodriguez*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark*  
COMMISSIONER